

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CLAYTON HARDY MELLENDER,

Plaintiff,

v.

Case No. 06-C-0346

ROMAN KAPLAN, M.D.,

Defendant.

ORDER DENYING PLAINTIFF'S MOTIONS FOR DEFAULT JUDGMENT (DOC. # 12),
AND TO COMPEL (DOC. # 17), WITHDRAWING PLAINTIFF'S MOTION FOR
JUDGMENT ON THE PLEADINGS (DOC. # 14) AND DENYING PLAINTIFF'S REQUEST
FOR PHOTOCOPIES.

Plaintiff, Clayton Hardy Mellender, filed this *pro se* civil rights complaint under 42 U.S.C. § 1983 and is proceeding *in forma pauperis* on an Eighth Amendment medical care claim. This order addresses plaintiff's motion for default judgment, motion to compel, motion for judgment on the pleadings and request for photocopies.

1. Motion for Default Judgment

The plaintiff has moved for default judgment, asserting that defendant Dr. Roman Kaplan failed to timely respond to the complaint. Federal Rule of Civil Procedure 55 provides in relevant part:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the default.

Fed. R. Civ. P. 55(a). The party against whom judgment is sought must have been served properly with process. 10A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2682 (3d ed. 1998). A defendant shall serve an answer "within 20 days after

being served with the summons and complaint" or "if service of the summons has been timely waived on request under Rule 4(d), within 60 days after the date when the request for waiver was sent[.]" Fed. R. Civ. P. 12(a).

In the present case, it is unclear whether defendant Dr. Kaplan was served with a waiver request or a summons on April 14, 2007. Regardless, service has been accomplished and defendant Dr. Kaplan filed a timely answer on May 1, 2007. Thus, the plaintiff's motion for default judgment must be denied.¹

2. Motion to Compel

The plaintiff has filed a motion to compel defendant Dr. Kaplan to file an answer to the complaint pursuant to § 803 of the Prison Litigation Reform Act, 42 U.S.C. § 1997(e), and Fed.R.Civ.P. 7(a). As discussed above, defendant Dr. Kaplan filed his answer on May 1, 2007. Hence, the motion to compel will be denied as well.

3. Motion for Judgment on the Pleadings

On December 12, 2006, the plaintiff filed a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). Subsequently, the plaintiff indicated that he wishes to withdraw this motion. (See PI.'s Letter of Dec. 13, 2006) Accordingly, the plaintiff's motion for judgment on the pleadings will be withdrawn.

¹The court notes that defendant Dr. Kaplan was not served within 120 days of the filing of the October 3, 2006, complaint as required under Fed.R.Civ.P. 4(m). However, the United States Marshal is responsible for serving process on behalf of individuals proceeding *in forma pauperis* (such as the plaintiff). See Fed.R.Civ.P. 4(c). And, inasmuch as the Marshal's failure to serve a defendant is good cause for an extension of time under Rule 4(m), see *Sellers v. United States*, 902 F.2d 598, 602 (7th Cir. 1990), defendant Dr. Kaplan was timely served for purposes of Rule 4(m).

4. Request for Photocopies

The plaintiff has requested that he be provided with copies of all pleadings filed in this case since January 20, 2007. In support of his request, the plaintiff claims that the Department of Corrections has not been forwarding his mail. (See Pl.s' Letter of May 23, 2007).

It is not standard practice to provide copies free of charge to parties in an action, whether they are indigent inmates or not. Rather, photocopies may be obtained from the Clerk of Court at the rate of \$0.25 per page. Moreover, at this point, it is unclear whether the plaintiff's mail has been forwarded to him.

Therefore,

IT IS ORDERED that the plaintiff's motion for default judgment (Doc. # 12) is **DENIED**.

IT IS FURTHER ORDERED that the plaintiff's motion to compel (Doc. # 17) is **DENIED**.

IT IS ORDERED that the plaintiff's motion for judgment on the pleadings (Doc. # 14) is **WITHDRAWN**.

IT IS ORDERED that the plaintiff's request for photocopies is **DENIED**.

Dated at Milwaukee, Wisconsin, this 1st day of June, 2007.

BY THE COURT

s/ C. N. CLEVERT, JR.

C. N. CLEVERT, JR.
U. S. DISTRICT JUDGE